

1 ANNETTE L. HURST (State Bar No. 148738)
DANIEL N. KASSABIAN (State Bar No. 215249)
2 ELENA M. DIMUZIO (State Bar No. 239953)
HELLER EHRMAN LLP
3 333 Bush Street
San Francisco, California 94104-2878
4 Telephone: +1.415.772.6000
Facsimile: +1.415.772.6268
5 E-mail: Annette.Hurst@HellerEhrman.com
Daniel.Kassabian@HellerEhrman.com
6 Elena.DiMuzio@HellerEhrman.com

7 Attorneys for Plaintiffs
CANTER & ASSOCIATES, LLC and
8 LAUREATE EDUCATION, INC.

9 CHRISTINE LEPERA (admitted *pro hac vice*)
10 GAYLE M. ATHANACIO (State Bar No. 130068)
SONNENSCHN NATH & ROSENTHAL LLP
11 525 Market Street, 26th Floor
San Francisco, California 94105-2708
12 Telephone: +1.415.882.5000
Facsimile: +1.415.882.0300
13 E-mail: CLepera@Sonnenschein.com
GAthanacio@Sonnenschein.com

14 Attorneys for Defendant
15 TEACHSCAPE, INC.

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN JOSE DIVISION

19 CANTER & ASSOCIATES, LLC and
20 LAUREATE EDUCATION, INC.,

21 Plaintiffs,

22 v.

23 TEACHSCAPE, INC.,

24 Defendant.
25
26
27
28

Case No. C 07-3225 RS

**JOINT CASE MANAGEMENT
STATEMENT**

Judge: The Honorable Richard Seeborg
Ctrm.: 4 (5th floor)
Date: December 19, 2007
Time: 2:30 p.m.

Pursuant to Federal Rule of Civil Procedure 26(f), Civil Local Rule 16-9, the Standing Order for All Judges of the Northern District of California, the Order Setting Initial Case Management Conference and ADR Deadlines (“Initial Case Management Order”) entered on June 19, 2007, and the Clerk’s Notices entered on September 20 and October 30, 2007, the parties to the above-captioned action submit this Joint Case Management Statement and request that the Court enter an order in accord herewith.

I. JURISDICTION AND SERVICE

A. Subject Matter Jurisdiction

Plaintiffs Canter & Associates, LLC (“Canter”) and Laureate Education, Inc. (“Laureate”) (collectively, “Plaintiffs”) assert that the Court has federal question subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338, because Plaintiffs assert claims for false or misleading advertising under the Lanham Act and copyright infringement under the Copyright Act. Plaintiffs further assert that the Court has supplemental jurisdiction over the related state law claims in this action pursuant to 28 U.S.C. § 1367, because they form part of the same case or controversy as the claims for violations of federal laws.

Defendant Teachscope, Inc. (“Teachscope” or “Defendant”) has moved to dismiss Plaintiffs’ complaint, including both Canter’s claim under the Lanham Act and Laureate’s claim under the Copyright Act for failure to state a claim, and thus asserts that subject matter jurisdiction is lacking. As of the date of this statement, Teachscope’s motion to dismiss is under submission before the Court.

B. Venue

The parties agree that venue is proper pursuant to 28 U.S.C. § 1391(b), because the Northern District of California is a judicial district in which a substantial part of the events at issue in this action occurred, and because Teachscope has its principal place of business in this judicial district.

C. Personal Jurisdiction and Service

Teachscope does not object to personal jurisdiction over it and does not object to the

1 method of service of the Summons and Complaint in this action.

2 **D. Miscellaneous**

3 This case is not a class action and there are no related cases or proceedings as
4 defined in Civil Local Rule 3-12. The parties do not believe that this case is suitable for
5 binding arbitration, a special master, or reference to the Judicial Panel on Multidistrict
6 Litigation.

7 **II. DESCRIPTION OF THE CASE**

8 **A. Plaintiffs' Factual Allegations**

9 Canter, a wholly-owned subsidiary of Laureate, provides distance-delivered master's
10 degree programs—e.g., Master in the Art of Teaching, Master in Education, and Master of
11 Science in Education—and graduate courses in the field of education for teachers through
12 partnerships with accredited universities, including Marygrove College (“Marygrove”).
13 Plaintiffs allege that starting April 2004, a group of twelve employees left Canter and
14 subsequently worked for Teachscope. These former employees had held various positions
15 at Canter, from executive management to product development, and Plaintiffs assert they
16 were instrumental in, among other things: (1) performing the market research summarized
17 in Canter's highly confidential business plans and proposals; (2) cultivating relationships
18 and negotiating confidential contractual terms with university partners like Marygrove;
19 (4) marketing Canter's offerings to university partners and to potential students; and
20 (5) developing the course materials for the graduate courses and master's degree programs
21 offered by Canter.

22 After these former employees began to work for Teachscope, it started to offer
23 distance-delivered master's degrees and graduate course programs in education. Plaintiffs
24 claim that despite having no previous expertise in this field, Teachscope targeted Canter's
25 most profitable accounts. Plaintiffs further assert that Teachscope also made use of Canter's
26 most effective means of marketing these courses. Plaintiffs contend that both the client
27 profitability and marketing means information is confidential and unknown to the public,
28 but was known to the former Canter employees. With respect to one partner in particular,

1 Marygrove, Canter asserts that at least one master's degree program that was to be offered
2 by Teachscape was advertised in a misleading way so as to cause confusion with Canter's
3 offering of the same degree program. Furthermore, Plaintiffs allege that Teachscape
4 improperly interfered with Canter's contractual relationship with Marygrove. Based on
5 these and other facts alleged, Plaintiffs have asserted that Teachscape's actions in entering
6 the market for distance-delivered master's degree programs and graduate courses in the
7 field of education was by unlawful means and has harmed Plaintiffs.

8 **B. Defendant's Factual Allegations**

9 Because Teachscape has moved to dismiss this action, it has not yet responded to the
10 facts alleged in the Complaint by Plaintiffs. However, Teachscape unequivocally denies
11 that it has engaged in any wrongdoing whatsoever and believes that Plaintiffs' present
12 action is without merit and represents Plaintiffs' attempt to thwart legitimate competition
13 and the rights of individuals to pursue employment of their choosing. Teachscape asserts
14 that it was only years after Plaintiffs' former employees left Plaintiffs' employ that it
15 entered into a relationship with Marygrove College ("Marygrove"). Teachscape further
16 asserts that prior to 2004, when Plaintiffs' first "former employee" allegedly came to work
17 for Teachscape, Teachscape had already partnered with numerous university and colleges to
18 develop and deliver teacher education programs, including programs that awarded teachers
19 specific credentials. Hence, Teachscape contends its partnering with colleges and
20 universities in connection with their master's degree programs was a natural and legitimate
21 extension of Teachscape's prior business.

22 Teachscape further alleges that Plaintiffs have publicly announced their intention to
23 abandon all university partners for online degree programs, except for Plaintiffs' wholly
24 owned university. Teachscape further alleges that Plaintiffs have conceded they have no
25 evidence of any substantial similarity between their copyrighted works and any works of
26 Teachscape—a fundamental element of any copyright claim—and further alleges that the
27 allegedly misleading advertisements only stated that Marygrove's degree program was
28 "updated".

1 **C. Legal Issues**

2 Canter has asserted claims against Teachscape for misappropriation of Canter's trade
3 secrets under California law, intentional interference with contract and prospective
4 economic relationships under California law, and for false and misleading advertising under
5 California and federal laws. Laureate has asserted a claim against Teachscape for copyright
6 infringement based upon Teachscape's alleged copying and use of Laureate's copyrighted
7 course materials. Plaintiffs have also asserted a claim against Teachscape for unfair
8 competition under California law.

9 Teachscape has not answered these claims, and instead has moved to dismiss all of
10 them for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). That
11 motion is pending before the Court. Teachscape asserts that none of Plaintiffs' claims have
12 any factual or legal basis.

13 **D. Relief Sought**

14 Plaintiffs seek injunctive relief prohibiting Teachscape from using Canter's trade
15 secrets, from wrongfully interfering with Canter's business relations with its university
16 partners, and from infringing Laureate's copyrights. In addition, Plaintiffs seek damages
17 and restitution from Teachscape of their actual damages / lost profits, and Teachscape's
18 ill-gotten gains / profits resulting from Teachscape's unlawful actions. Plaintiffs also seek
19 exemplary and punitive damages, attorneys' fees and costs associated with this action.

20 Teachscape asserts that Plaintiffs are entitled to no affirmative relief whatsoever. To
21 the contrary, Teachscape asserts Plaintiffs are liable to Teachscape for the attorneys' fees it
22 incurred in connection with Plaintiffs' copyright claim.

23 **E. Narrowing of Issues**

24 At present, unfortunately, the parties do not foresee any narrowing of issues absent
25 further assistance from the Court. The parties have set forth separate proposals regarding
26 the issue of Plaintiffs' copyright infringement claim, which are set forth below.

27 **1. Plaintiffs' position**

28 Since the Court's hearing on Teachscape's motion to dismiss, Plaintiffs proposed

that Teachscape produce the earliest available draft and final version—i.e., latest version, or published version if publication has occurred—of the course materials for the specialized Teachscape master’s degree programs—e.g., Curriculum, Instruction & Assessment (“CIA”); Reading & Literacy, Grades K–6; and Mathematics, Grades K–5 and Grades 6–8—that are currently offered through Marygrove or were advertised by Teachscape as a master’s degree program to be offered through Marygrove. Teachscape refused this offer.

2. Teachscape’s position

Prior to the Plaintiffs’ filing of their complaint, Teachscape offered to engage in a mutual “apples to apples” exchange of Marygrove final course materials in an effort to assuage Plaintiffs’ concerns and avoid litigation. Plaintiffs rejected this offer and filed the present action. Subsequent to the hearing of Teachscape’s motion to dismiss, Teachscape again offered this mutual exchange as a way to avoid further litigation, which Plaintiffs refused.

III. MOTIONS

Presently pending is Teachscape’s Motion To Dismiss And/Or Strike The Complaint, which is fully briefed and for which a hearing took place on September 26, 2007. Teachscape’s motion is currently under submission before the Court. Also pending are Plaintiffs’ Motion for Entry of Protective Order and their Motion to Compel Initial Disclosures. By the Court’s order of December 12, 2007, Teachscape will serve oppositions to these motions, if any, on December 12, Plaintiffs will reply on December 19, and the motions will be heard on January 9, 2008.

Plaintiffs anticipate further dispositive motions and have included a deadline for such motions in their proposed schedule in Part VIII.1, *infra*.

Teachscape believes establishing any deadlines for such motions is premature and unwarranted in light of its pending motion to dismiss.

IV. AMENDMENT OF PLEADINGS

Plaintiffs do not believe the motion to dismiss is well taken, however they may amend the Complaint in the event that any claims are dismissed. Plaintiffs also reserve the

1 right to later amend to add claims or join parties. Because it has filed a motion to dismiss,
 2 Teachscope has not filed an initial Answer at this time. Plaintiffs propose a deadline to
 3 amend the pleadings as part of its proposed schedule in Part VIII.1, *infra*.

4 Teachscope believes establishing any deadlines for amending pleadings is premature
 5 and unwarranted in light of its pending motion to dismiss.

6 **V. EVIDENCE PRESERVATION**

7 Both parties assert that they have taken steps to preserve physical and electronic
 8 evidence relevant to the issues reasonably evident in this action. These steps include the
 9 distribution of an evidence preservation memorandum/communication to those individuals
 10 employed by the parties who are likely to possess such physical and electronic evidence,
 11 and the cessation of routine e-mail, electronic document, and archived physical document
 12 destruction programs.

13 **VI. INITIAL DISCLOSURES**

14 There is a dispute between the parties as to their initial disclosure obligations, and
 15 the parties' positions are set forth below:

16 **1. Plaintiffs' position**

17 Plaintiffs served their Rule 26(a) initial disclosures on September 26, 2007, pursuant
 18 to the deadline for the same in the Initial Case Management Order. Because Teachscope did
 19 not serve its initial disclosures on the same day, Plaintiffs have moved to compel them. The
 20 hearing for the motion to compel is January 9, 2008 at 9:30 a.m.

21 **2. Teachscope's position**

22 Teachscope informed Plaintiffs of its objection to their assertion that Teachscope was
 23 required to make its initial disclosures on September 26th (which was prior to the parties'
 24 Rule 26 conference), in light of its motion to dismiss under submission with the Court, and
 25 as a result of the Court's continuance of the Court's Case Management Conference.
 26 Teachscope believes its initial disclosures are not overdue and believes the matter as to the
 27 timing of Teachscope's disclosure should be addressed, if at all, at the Case Management
 28 Conference. Nonetheless, Teachscope intends to serve its initial disclosures on December

12, 2007, absent an order by this Court, because this is the date set by this Court for the filing of this joint statement.

3 **VII. PROPOSED DISCOVERY PLAN**

4 **A. Discovery Schedule**

5 Plaintiffs propose phased discovery and further exchanges of disclosures, privilege
6 logs, etc. as set forth in its proposed schedule in Part VIII.1, *infra*.

7 The parties have not been able to agree on a discovery schedule, due to Teachscope's
8 refusal to discuss the substance of any of the dates or deadlines proposed by Plaintiffs.
9 Plaintiffs believe Teachscope's position is improper because there is no order staying
10 discovery in this case and the Federal Rules and Court's orders require the parties to meet
11 and confer on this issue.

12 Teachscope believes waiting to set discovery cut-offs and trial deadlines until after
13 the Court rules on its motion to dismiss, (at which time this Court may have determined the
14 case or certain claims should be dismissed, and/or obtaining the Court's guidance on the
15 parties' differences, in particular the parties' proposals for focused exchange of Marygrove
16 course materials), was and is a reasonable approach and consistent with Teachscope's
17 obligations under the Court's rule and Federal Rules.

18 **B. Discovery Limits**

19 **1. Plaintiffs' position**

20 Plaintiffs request that the default discovery limits set forth in Federal Rules of Civil
21 Procedure 26-37 be modified for this action as follows:

22 (1) The number of depositions per side should be increased from 10 to 20 because
23 (a) there are twelve former employees of Canter, some of whom are located outside of this
24 district, that subsequently have worked for Teachscope and who may provide testimony
25 relevant to the claims asserted, (b) there are additional party witnesses that Plaintiffs may
26 wish to depose, (c) there are third-party witnesses at Marygrove and other university
27 partners of Canter, who are located outside of this district, that have been approached by
28 Teachscope, for whom depositions are needed to present their testimony at trial, and

(d) there are numerous claims and facts relevant to the asserted claims for which the above-noted potential witnesses may have non-duplicative testimony.

(2) The number of interrogatories that each side may propound should be changed from 25 per party to 40 per side because of the number of asserted claims and the numerous facts relevant to those claims.

Plaintiffs have propounded requests for production and noticed the deposition of Teachscope pursuant to Rule 30(b)(6), seeking discovery relating to their claims as set forth the complaint. With respect to their copyright claim, Plaintiffs' discovery requests are in accord with their proposal seeking first drafts and final versions of certain course materials as discussed in Part II.E.1, *supra*.

2. Teachscope's position

As noted in Part II.E.2, *supra*, Plaintiffs have rejected Teachscope's proposal for an "apples to apples" comparison of the allegedly infringing Marygrove course materials. In addition, Teachscope believes that modification of discovery limits is inappropriate and in all events, premature in light of its pending motion to dismiss. Teachscope also notes that Plaintiffs have propounded 80 requests for production and a notice of its deposition pursuant to Rule 30(b)(6) identifying 18 separate topics (which total over 80 areas of inquiry when the subdivisions to each topic are considered), which Teachscope has objected to on a number of grounds.

C. Electronic Discovery and Document Production

1. Plaintiffs' position

Plaintiffs propose that the parties produce electronic information and documents, such as e-mail, documents, spreadsheets, and presentation slides, in TIFF format with certain metadata – i.e., file location, author / sender, recipients (if applicable), creation or sent date, date last modified (if applicable), first page and last page, attachment cross-references (if applicable) – and that is text searchable to the extent the original was text searchable. Plaintiffs further propose that the parties permit inspection of electronic documents specifically identified by the requesting party, in order to ascertain metadata or

1 other electronic information contained therein that was not accessible as part of the agreed-
2 upon production format, to the extent that the inspection would not be unduly burdensome
3 on the party that produced the document. In addition, Plaintiffs further propose that the
4 parties each have the option of producing physical documents in scanned TIFF format with
5 appropriate page breaks to differentiate documents, or in paper format. Irrespective of the
6 production format, physical documents will be produced in an order that replicates how they
7 were kept in the ordinary course of business, and will include associated file folder
8 headings, post-it notes, etc.

9 **2. Teachscape's position**

10 Teachscape asserts that substantive discussions on electronic discovery should be
11 deferred pending a ruling by this Court on its motion to dismiss. Teachscape believes this
12 position is reasonable and consistent with its obligations under the Federal Rule and Court's
13 orders.

14 **D. Limitation of Expert Discovery**

15 **1. Plaintiffs' position**

16 Plaintiffs propose that the production of draft expert reports and communications by
17 experts with counsel for the parties is exempt from discovery.

18 **2. Teachscape's position**

19 Teachscape believes that discussion of expert discovery limitations is premature and
20 inappropriate at this time.

21 **E. Privilege Log**

22 **1. Plaintiffs' position**

23 Plaintiffs propose that entries for privilege logs produced shall contain a unique ID
24 number, a production (Bates) number for redacted docs, a date (by which all log entries will
25 be sorted), document type, Doc Type, identification of the sender, identification of the
26 recipient and those copied (if any), a description of the subject such that the opposing party
27 may ascertain the basis of the privilege asserted, and the type of privilege asserted. In
28 addition, the parties agree that privileged documents or other privileged information created

after the commencement of this action are exempt from being logged.

2. Teachscape's position

Teachscape believes that decisions regarding privilege logs are inappropriate and premature in light of its pending motion to dismiss.

VIII. PROPOSED SCHEDULING

1. Plaintiffs' position

The parties have not been able to agree on a case management schedule, due to Teachscape's refusal to discuss the substance of any of the dates or deadlines proposed by Plaintiffs. Plaintiffs believe Teachscape's position is improper because there is no order staying discovery in this case and the Federal Rules and Court's orders require the parties to meet and confer on this issue.

Plaintiffs propose the following comprehensive schedule, which requests deadlines and dates for events in relation to the trial date set by the Court and sets forth approximate dates for deadlines and events based on a suggested trial date of November 2008.

Deadline to amend pleadings / add parties:	7 months before trial / March 2008
Fact discovery deadlines:	
• Initial disclosures	September 26, 2007
• Deadline for first exchange of privilege logs	8 months before trial / February 2008
• Deadline for production of documents and service of amended privilege logs:	6 months before trial / April 2008
• Fact discovery cutoff	5 months before trial / May 2008
Expert discovery deadlines:	
• Expert discovery commences and parties identify experts on issues for which party has burden of proof	5 months before trial / June 2008
• Opening expert reports	5 months before trial / June 2008
• Rebuttal expert reports	4 months before trial / July 2008
• Expert discovery cutoff	3 months before trial / August 2008
Dispositive motion practice deadline	2 months before trial / September 2008
Pretrial Conference and Trial	November 2008

1 **2. Teachscope's position**

2 Teachscope continues to believe that it is inappropriate and impractical to agree upon
3 trial scheduling when the Court has its motion to dismiss under submission and without
4 further guidance from the Court.

5 **IX. TRIAL**

6 Plaintiffs have requested a trial by jury, and estimate that trial will be one to two
7 weeks in length depending upon the Court's preferences for the length of trial days and the
8 number of trial days per week. Teachscope believes that setting or estimating the length of
9 trial is impractical at this time in light of its pending motion to dismiss.

10 **X. SETTLEMENT AND ADR**

11 Pursuant to ADR Local Rule 3-5, the parties have agreed to court-sponsored
12 mediation.

13 Plaintiffs assert that settlement will not be possible until meaningful discovery has
14 taken place, including production by Teachscope of first drafts and final versions of its
15 course materials, as discussed in Part II.E.1, *supra*. Thus, Plaintiffs request that
16 court-sponsored mediation take place after Teachscope has produced such materials, or in
17 the alternative, that the Court order a settlement conference in place of mediation at that
18 time.

19 Teachscope disagrees with Plaintiffs' above assertions regarding the need for
20 Plaintiffs' to review "first drafts" of Teachscope's course materials. While Teachscope
21 believes that this case should be dismissed, it is not opposed to mediation if and when
22 Plaintiffs are willing in good faith to engage in a meaningful settlement discussion.

23 **XI. CONSENT TO MAGISTRATE JUDGE**

24 The parties have consented to Magistrate Judge Seeborg to conduct all further
25 proceedings, including trial and entry of judgment.

26 **XII. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

27 Plaintiffs have included their "Certificate of Interested Entities or Persons" at the end
28 of their Complaint. In light of recent stock transactions, however, Plaintiffs restate their

1 certification as follows: Canter is a wholly owned subsidiary of Laureate. Laureate is now
2 a privately held company, and thus is no longer a publicly traded company.

3 Teachscape has filed its Certificate of Interested Entities or Persons. Teachscape is a
4 privately held company. Sprout Group, Quad Partners, and WS Investments, each have an
5 interest of 10% or greater in Teachscape.

6 Respectfully submitted,

7 Dated: December 12, 2007

HELLER EHRMAN LLP

8 By /s/ DANIEL N. KASSABIAN

9 Attorneys for Plaintiffs

10 CANTER AND ASSOCIATES, LLC and
11 LAUREATE EDUCATION, INC.

12 Dated: December 12, 2007

SONNENSCHN NATH & ROSENTHAL LLP

13 By /s/ GAYLE M. ATHANACIO

14 Attorneys for Defendant

15 TEACHSCAPE, INC.
16
17
18
19
20
21
22
23
24
25
26
27
28